

## **REMARKS**

The present application is directed to an apparatus and method for processing a fluid sample. Claims 1-17 and 25-47 are currently pending. Claims 18-24 have been withdrawn as directed to a non-elected invention. This amendment adds new Claims 25-47 and amends Claims 1 and 3-17. Support for the new claims and amendments can be found in, *e.g.*, the original claims and in paragraphs [0040], [0050], [0056] and [0060] of the specification (paragraph numbers refer to the Patent Application Publication No. 2006/0281094). No new matter has been added.

### ***Claim Interpretation***

The Examiner asserts that several of the claims were written using means-plus-function language. Applicants have amended the claims to which the Examiner has accorded, or refused to accord, treatment under 35 U.S.C. § 112, sixth paragraph. Applicants submit that none of the claims, as amended, include means-plus-function language.

In view of the above, applicants have not considered or addressed the Examiner's claim interpretations in paragraphs 6-12 of the office action and submit that no estoppel of any issues related thereto should apply. If 35 U.S.C. § 112, sixth paragraph issues—or similar issues related thereto—arise during subsequent prosecution of the present application or other related application(s), applicants will address the claim interpretations contained in this office action at that time.

### ***Rejections Under 35 U.S.C. § 102***

Claims 1, 3-5, 11 15 and 17 are rejected under 35 U.S.C. § 102(b) as being anticipated by Leighton *et al.* (WO 99/44063, “Leighton”). Applicants note that Leighton was filed on February 24, 1999 and published on September 2, 1999. Applicants respectfully traverse in view of the above amendments and following remarks.

Leighton describes an automated system for high speed penetration of microarrays of tissue samples. A specimen tray is located on an XY stage and a punch apparatus is mounted

above the stage for movement in Z. A combination of punch and stylet on the punch apparatus is used to produce and remove cylindrical samples from a tissue sample on the specimen tray. By moving the stage in X and Y, an array of cylindrical samples can be produced.

The Examiner appears to have interpreted the term “functional component” of Claim 1 to be element #132 of Figure 13. It is not clear from the specification of Leighton whether this element is (1) the tissue sample or (2) the tray which holds the tissue sample—applicants note that p. 13, lines 26-29 of Leighton attributes each of these descriptions to element #132.

Claim 1—as amended—includes the limitations that (i) the functional component is “releasably held in place on the platform,” and (ii) that the functional component is “able to act as a collector for moving the sample, analyte or reagent from one chamber to another.” Element #132 of Leighton—whether a tissue sample or a tray holding the tissue sample—does not act as a collector as required by amended Claim 1.

The Examiner has referred to Figure 9 of Leighton in support of the rejection of Claim 1. Figure 9 shows an articulating arm holder 54 and clamp 56 which holds a support slide 58, onto which a thin section of tissue is mounted. The arm holder 54 is articulated to swivel between a first position in which the support slide 58 is locked in position over the container 31 holding the donor block and a second position in which support slide 58 moves horizontally out of position to permit free access to the punch (see page 7, lines 12-19). No part of the arm holder 54 or support slide 58 acts as a collector for moving the sample, analyte or reagent as required by Claim 1 as amended.

For at least the reasons discussed above, and possibly for other reasons, applicants submit that Claim 1, as amended, is not anticipated by Leighton and applicants request that the rejection of Claim 1 under 35 U.S.C. § 102(b) be withdrawn.

Claims 3-5, 11, 15 and 17 are dependent on Claim 1 and incorporate all of its limitations. Applicants thus submit that these claims are allowable as dependent on an allowable independent claim and request that their rejection be withdrawn.

### ***Rejections Under 35 U.S.C. § 103***

Claims 1, 2, and 5-16 are rejected under 35 U.S.C. § 103(a) as obvious in view of Leighton and several other references. Applicants respectfully traverse in view of the above amendments and remarks.

Initially, applicants note that the Examiner appears to rely solely on the rejection of Claim 1 in view of Leighton as described in the rejection under 35 U.S.C. § 102(b). The Examiner does not provide a separate explanation for the rejection of Claim 1 under 35 U.S.C. § 103(a) and does not assert that Claim 1 is rendered obvious in view of the teachings of Leighton or any of the other cited references. Accordingly, applicants assume that the sole basis for the rejection of Claim 1 is that Claim 1 is anticipated by Leighton as described in paragraph 14 of the office action. For at least the reasons discussed above, Applicants submit that Claim 1 is not anticipated by Leighton.

Claims 2 and 5-16 are dependent on Claim 1 and incorporate all of its limitations. Applicants thus submit that these claims are allowable as dependent on an allowable independent claim and request that their rejection be withdrawn.

### ***New Claims***

New Claims 25-47, as independent claims or as dependent claims incorporating limitations from independent claims, either incorporate similar limitations to those of Claim 1 described above or include new limitations not disclosed or suggested in the cited references. Accordingly, applicants respectfully request that these claims be given favorable consideration.

**CONCLUSION**

The foregoing is submitted as a full and complete response to the Office Action mailed August 4, 2008.

Applicants assert that the claims are in condition for allowance and respectfully request that the application be passed to issuance. If the Examiner believes that any informalities remain in the case that may be corrected by Examiner's amendment, or that there are any other issues which can be resolved by a telephone interview, a telephone call to the undersigned attorney at (404) 815-6500 is respectfully solicited.

No additional fees are believed due; however the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account Number 11-0855.

Respectfully submitted,

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